PETITION NOT PRINTED

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1950

## No. 594

GARFIELD A. BERLINSKY,

*Petitioner,*

VS.

HELEN EISENBERG AND SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE, TRUSTEES,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

## BRIEF OF RESPONDENTS HELEN EISENBERG AND SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE, TRUSTEES, IN OPPOSITION

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### OPINIONS BELOW

The opinion of the Court of Appeals of Maryland is reported in 76A 2d 353. There was no opinion of the Baltimore City Court.

## JURISDICTION

The Petitioner has invoked the jurisdiction of this Court under U. S. C. Title 28, Sec. 1257(3).

## STATEMENT

As will appear from the opinion of the Court of Appeals of Maryland in the instant case (Pet. App. C, p. 1, 73A 2d 353), this is a suit instituted by Respondents to recover from the Petitioner for the use and occupancy of certain improved real property in Baltimore City belonging to the Respondents. In this case Petitioner contended that the property was "housing accommodations" subject to federal rent control and that because of Respondents failure to register the property the Court lacked jurisdiction to grant the relief prayed. This same contention had been made by Petitioner in a prior eviction proceeding between the same parties involving the same property, and had there been decided, on October 27, 1947, adversely to Petitioner after a full hearing. (See: *Berlinsky v. Eisenberg, et al,* 190 Md. 636 59A 2d 327, (1948) (Pet. App. C, p. 3) 59A. 2d 327). No application was made in that earlier case to this Court for a writ of certiorari to the Court of Appeals of Maryland or to the Baltimore City Court. In view of this prior final decision, the Court of Appeals decided in the instant case that Petitioner was foreclosed by application of the doctrine of *res judicata* from contending that the property was "housing accommodations" or that the federal rent control statutes and regulations were applicable. No other question was passed on or decided by the Court of Appeals of Maryland.

## REASON FOR DENYING WRIT

The writ of certiorari should be denied because the decision of the Court of Appeals of Maryland rested on adequate non-federal grounds and involved no federal question.

Rules of the Supreme Court, Rule 38, Sec. 5.

*Young v. Ragen*, 337 U. S. 235, 69 S. Ct. 1073, 93 L. Ed. 1333 (1949);

*Southwestern Bell Telephone Company v. Oklahoma*, 303 U. S. 206, 58 S. Ct. 528, 82 L. Ed. 751 (1938).

Respectfully submitted,

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April, 1951.